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07 UNITED STATES DISTRICT COURT  
08 WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

09 RONALD BUZZARD, JR., ) CASE NO. C06-1653-JLR-MAT  
10 )  
11 Petitioner, )  
12 )  
13 v. ) ORDER RE: RESPONSE  
14 ) TO AMENDED PETITION  
15 DARREN SWENSON, )  
16 )  
17 Respondent. )  
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19 )  
20 )  
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22 )

15 Respondent seeks dismissal of petitioner's amended habeas petition as untimely filed.  
16 (Dkt. 41.) Respondent asserts that, pursuant to this Court's May 3, 2007 Order (Dkt. 34),  
17 petitioner's amended petition was due for filing by June 4, 2007. Respondent avers that, although  
18 signed on June 6, 2007 (*see* Dkt. 37), petitioner did not put his amended petition in the prison mail  
19 system until June 13, 2007. He argues that petitioner, therefore, untimely submitted his amended  
20 pleading nine days after the June 4, 2007 deadline. *See Houston v. Lack*, 487 U.S. 266, 270-71  
21 (1988) (notice of appeal deemed filed on the day that it was signed and delivered to prison  
22 authorities for mailing to the court).

01 In support of the contention that petitioner filed his amended petition nine days after the  
02 June 4, 2007 deadline, respondent attaches a handwritten document with a June 13, 2007 date  
03 stamp reflecting that petitioner mailed something to this Court and counsel for respondent on that  
04 date. (See Dkt. 41, Ex. 1.) Respondent contends that this document is the "Prison Mail Log" ~~id.~~  
05 at 3) establishing when petitioner gave his amended petition to prison authorities for mailing. Yet,  
06 respondent fails to provide an affidavit or any other documentation supporting this contention.  
07 Without such additional support, the Court finds itself unable to determine when petitioner gave  
08 his amended petition to prison authorities for mailing. See, e.g., *Caldwell v. Amend*, 30 F.3d  
09 1199, 1202-03 (9th Cir. 1994) (where the prisoner submits an affidavit as to the date the  
10 documents were submitted to prison authorities, the burden "shifts to the opposing party . . . [to]  
11 produc[e] evidence in support of a contrary factual finding.")

12 Accordingly, the Court hereby ORDERS:

13 (1) Respondent shall provide one or more affidavits and any other relevant  
14 documentation supporting its contention as to when petitioner delivered his amended petition to  
15 prison authorities for filing. Respondent shall submit the requested affidavit(s) and documentation  
16 on or before **August 27, 2007** and the Court hereby renotes all pending motions in this case for  
17 consideration as of that same date.

18 (2) The Clerk shall direct copies of this Order to petitioner, to counsel for respondent,  
19 and to the Honorable James L. Robart.

20 DATED this 6th day of August, 2007.

21 

22 Mary Alice Theiler  
United States Magistrate Judge